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January 14, 2005

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Federal Communications Commission  
Office of Secretary

Honorable Richard L. Sippel  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

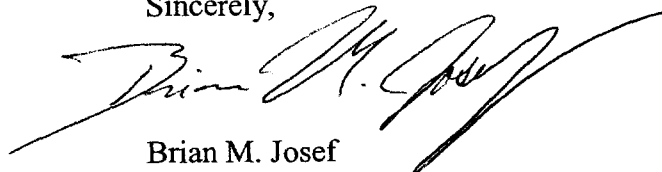
**Re: Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.;**  
**EB Docket No. 04-381**

Dear Judge Sippel:

As directed in your December 15, 2004 Order, FCC 04M-41, enclosed please find  
*Complainants' and Respondent's Joint Status Report on Document Production and Exchange* in  
the above-captioned proceeding.

Please don't hesitate to contact me with any questions.

Sincerely,



Brian M. Josef

Enclosures

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Before The  
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Washington, D.C. 20554

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JAN 14 2005

Federal Communications Commission  
Office of Secretary

FLORIDA CABLE  
TELECOMMUNICATIONS ASSOCIATION,  
INC., COX COMMUNICATIONS GULF  
COAST, L.L.C., *et. al.*

*Complainants,*

v.

GULF POWER COMPANY,

*Respondent.*

E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel  
Chief Administrative Law Judge

**COMPLAINANTS' AND RESPONDENT'S JOINT STATUS REPORT ON  
DOCUMENT PRODUCTION AND EXCHANGE**

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. ("Complainants") and Gulf Power Company ("Gulf Power" or "Respondent") hereby respectfully submit this Status Report regarding the January 11, 2005, production and exchange of documents, pursuant to Chief Administrative Law Judge Sippel's Order, dated December 15, 2004 ("Order").<sup>1</sup>

On January 11, 2005, counsel for Complainants and Gulf Power exchanged the business documents as directed in the Order. The parties agreed during a January 7, 2005 telephone

<sup>1</sup> *In re Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.*, Order, EB Docket No. 04-381, FCC 04M-41 (rel. Dec. 15, 2004) (hereinafter "Order").

conversation that they would send the documents for delivery on January 12, 2005. Gulf Power received Complainants' documents on January 12<sup>th</sup>. However, due to an inadvertent service error by Gulf Power, Complainants did not receive Gulf Power's documents until January 13, 2005.

## **I. CABLE OPERATOR COMPLAINANTS' PRODUCTION OF DOCUMENTS**

### **A. Cable Operator Complainants' Description**

Complainants provided Gulf Power and the Enforcement Bureau with over 6600 pages of inventory, accounting, and schematic documents that identify and account for the Gulf Power poles to which Complainants are attached. Specifically, these documents consist of Complainants' facilities maps covering their geographic service areas, applications for Pole Attachment Permits and Gulf Power's permit grants, pole attachment agreements, make-ready documents (including surveys and diagrams relating to pole change-outs/substitutions, transfers, and relocations required to be performed on Gulf Power poles); invoices and accounting documents (including charges for annual pole attachment rentals and make-ready work), payment records, aggregate annual pole count information as indicated on Gulf Power invoices, and other correspondence between Complainants and Gulf Power concerning pole attachment matters.

The vast majority of the above-listed documents, with the exception of Complainants' facilities maps, consists of copies of the actual business documents and correspondence received from and sent to Gulf Power. Thus, there should be no question as to reliability or authenticity. Moreover, Gulf Power is in a position to confirm the existence, and verify the accuracy, of these *documents from its own business records.*

Complainants' scaled facilities maps have been prepared by professional engineering firms for purposes of documenting Complainants' cable distribution plant for their internal use.

Gulf Power already has received many of these facilities maps – usually cable operators included them with pole attachment permit applications to depict the precise locations of the Gulf Power poles implicated. Such examples are included in the pole permit applications include in the document exchange. While these facilities maps may include some non-Gulf Power poles, the majority of poles shown on these maps are owned by Gulf Power.

In addition, Gulf Power may use the facilities maps to confirm the universe of poles to which Complainants are attached. Moreover, Gulf Power can compare its own distribution plant maps against those provided by Complainants to determine precisely where cable operators are currently attached. Next, Gulf Power can cross-check its own records to come up with the individual pole numbers on a given street or in particular neighborhoods. Complainants' pole attachment applications and permit grants from Gulf Power similarly will provide this information, with more recent information concerning actual attachment dates. Finally, Gulf Power may review the pole count information from pole attachment invoices and related correspondence received by Complainants and specific charges for make-ready work, including pole change-outs, billed to Complainants and received by Gulf Power.

None of the documents in Complainants' possession indicate the presence – and specific locations (with detailed measurements) – of other attachers besides the cable operators on specific poles. Further, none of these documents would help Gulf Power establish that there have been any situations where additional “just compensation” is due, as they reflect cable operators' payments for the costs associated with change-outs and other make-ready. Thus, no “lost opportunities” are evident for the time period covered by Complainants' Complaint or even currently.

Complainants understand that these items would fall within Gulf Power's burden of proof and production in this proceeding, which would be demonstrated by Gulf Power's own records concerning all attachers on specific poles or addressed for current pole situations in a study by a qualified, third-party consultant or accountant "with respect to each pole owned and/or controlled by Gulf Power that is occupied by all or any of the Complainant cable companies."<sup>2</sup>

Finally, Complainants and Gulf Power are negotiating a more comprehensive confidentiality agreement to address the review and use of confidential information and documents containing trade secrets, and commercial, proprietary or financial information that is confidential and/or privileged. Complainants and Gulf Power plan to submit a Stipulation and Agreed Confidentiality Order to the Enforcement Bureau and Judge Sippel for his signature, pursuant to Section III of the Order.<sup>3</sup>

#### **B. Respondent Gulf Power's Description**

Gulf Power does not anticipate any authenticity problems with the documents produced by Complainants. However, without reviewing the documents in detail (and comparing them with corroborating Gulf Power documents), Gulf Power cannot comment on the reliability, accuracy or relevance of the documents. This is not a task which could be accomplished in two days, considering the volume of documents produced (four full bankers boxes). Gulf Power does anticipate, though, that if the documents are as characterized by Complainants (and assuming the reliability of those documents), they will bear on the threshold issue of pole crowding, particularly in conjunction with additional Gulf Power data and the data proposed to be developed by a third party consultant.

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<sup>2</sup> See Order at 2.

<sup>3</sup> See Order at 3, n.5.

## **II. GULF POWER PRODUCTION OF PLANNING DOCUMENTS**

### **A. Cable Operator Complainants' Description**

On January 13, 2005, Complainants' received Gulf Power's production of documents, comprised of copies of six distribution load studies totaling 771 pages, prepared and drafted by Gulf Power Company's Distribution Planning Department. Specifically, Gulf Power provided the following studies:

- South Pensacola Area Distribution Study, 2001 – 2005 (dated January 2002);
- Fort Walton Area Distribution Study, 2000 – 2004 (dated August 2000);
- North Pensacola Area Distribution Study, 2000 – 2004 (dated April 2000);
- Panama City Area Distribution Study, 2001 – 2005 (dated May 2002);
- Destin Area Distribution Study, 2003 – 2007 (dated October 2003);
- Central Pensacola Area Distribution Study, 2003 – 2007 (dated January 2003).

The Gulf Power studies describe voltage and feeder line loading profiles and estimates. In addition, the reports assess capacity needs of various electricity substations for the periods in question. The studies explain that their "main body" consists of the Substation and Feeder Summaries that feature projected feeder loads, recommended actions for Gulf Power to take to address loading conditions, and justifications for such actions. According to the reports, each year's recommended actions are based on the assumption that Gulf Power followed the previous years' recommendations.

Complainants submit that Gulf Power's load studies provide no reliable, useful or relevant information about current actual pole capacity or even future pole capacity. The voltage and feeder line loading and substation capacity estimates shed no light on Gulf Power's current or planned use of space on its distribution poles, the identity or number of current or historical attachers, or whether any opportunities were forgone by the presence of any attacher on any of Gulf Power's poles. For example, they do not indicate whether a pole is currently or ever was at

“full capacity,” whether excess capacity exists, or if there was insufficient capacity, why it was insufficient or what was done to correct it. Many documents refer to substations and equipment that have no relation to any identified poles to which Complainants may be attached. There appear to be no documents suggesting any additional attachments were needed for any of Gulf Power’s facilities as – at most – there are discussions of replacements of their existing cables.

Indeed, in the brief time that counsel for Complainants has had to review the studies prior to filing this Status Report, they found no details describing Gulf Power’s utilization of pole capacity, the key factual issue in this proceeding. Additionally, Gulf Power’s offer to use a consultant to examine one of Complainants’ current attachments over the next 5-7 months demonstrates that there are no current documents to support any of their claims and that even after discovery is completed there will not be sufficient evidence on the key issues identified in this proceeding to make any award of additional compensation.

These studies focus principally on the recommendations that Gulf Power take steps to alleviate voltage and capacity issues, including transferring taps, installing switched banks, or “reconductoring” to reduce thermal ampacity. The time period within which these suggested actions are to occur spans from 2000 through 2007 – the period after Gulf Power implemented its pole attachment rate increase. Gulf Power’s production of documents contains no information that explains the connection – if one exists – between following these recommendations, on the one hand, and utilization of pole space, on the other. Moreover, these studies provide no indication that the construction and installations specified in the recommendations actually occurred, or that they resulted (or would result) in increased use of pole space beyond the 7.5 feet of space already reserved for Gulf Power’s core electric functions or encroachment into the “communications space” where Complainants attach.

In addition, each recommendation is prepared as part of a construction worksheet (“Gulf Power Company Proposed Addition to Construction Budget”) in which the construction and materials (including installation of line transformers, plant transfers, etc.) are included. In every instance, these worksheets remain blank, thereby providing no information regarding the specific work to be done – and whether it actually occurred – in order to implement the recommendation. A redacted page of a “Gulf Power Company Proposed Addition to Construction Budget” is attached hereto as Exhibit 1 as an illustrative example.

In sum, Complainants submit that Gulf Power’s distribution load studies are insufficient to provide either Complainants or the Commission with information sufficient to demonstrate the utilization of pole space on specific poles.

#### **B. Respondent Gulf Power’s Description**

Gulf Power disagrees with Complainants assessment of the Distribution Studies. As explained in Gulf Power’s January 9, 2004 Description Of Evidence (which led to the FCC’s entry of the Hearing Designation Order), these studies, in conjunction with testimony of Gulf Power’s distributions planners and engineers, evidence the core business plan/purpose of Gulf Power’s distribution system (to provide electricity to its customers vs. serve as host to CATV attachers) and the impact of third-party attachers on Gulf Power’s core business plans and operations. In addition to the impact of reserved space on the crowding analysis, Gulf Power’s Distribution Studies also bear on the “higher valued use” component of the Eleventh Circuit’s test.



*Eric B. Langley (JRS)*

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**GULF POWER COMPANY**

January 14, 2005

Respectfully submitted,

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L.L.C., COMCAST CABLEVISION  
OF PANAMA CITY, INC.,  
MEDIACOM SOUTHEAST, L.L.C.,  
and BRIGHT HOUSE NETWORKS,  
L.L.C.**

## **EXHIBIT 1**

OD-35

GULF POWER COMPANY

SHEET 1 OF 1

**PROPOSED ADDITION TO CONSTRUCTION BUDGET**

**LOCATION:** South Pensacola

**PREPARED BY:** \_\_\_\_\_

**EST'D DATE NEEDED:** 2002

**DATE SUBMITTED:** \_\_\_\_\_

**DESCRIPTION AND NECESSITY FOR WORK :**

Oakfield - OCB 7922

**RECOMMENDATION:**

**REDACTED**

**JUSTIFICATION:**

**REDACTED**

=====

<b>Cost of Material</b>	_____
<b>Cost of Installation</b>	_____
<b>Subtotal</b>	_____
<b>Eng. &amp; Overheads</b>	_____
<b>Total Plant Add's</b>	_____
<b>Plant Transfers (CR)</b>	_____
<b>Plant Removal Cost</b>	_____
<b>Plant Salvage (CR)</b>	_____
<b>Total Cash Required</b>	_____

=====

**Line Transformers** \_\_\_\_\_

**Customers' Meters** \_\_\_\_\_

**Maintenance Charges** \_\_\_\_\_

**Original Cost Retired** \_\_\_\_\_

=====

**DO NOT WRITE IN THIS SPACE**

**P.E. No.** \_\_\_\_\_ **Year(s)** \_\_\_\_\_

**Include in Budget** \_\_\_\_\_

**Approval** \_\_\_\_\_

**Date** \_\_\_\_\_

=====

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complainants' and Respondent's Joint Status Report On Document Production And Exchange has been served upon the following by telecopier and U.S. Mail on this the 14<sup>th</sup> day of January, 2005:

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Debra Sloan